IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MICHAEL MILLER,	No. C 06-06-6341 JSW (PR)
Petitioner,	ORDER DISMISSING PETITION FOR A WRIT OF HABEAS
vs.	CORPUS
LAURIE SMITH, Sheriff,	(Docket Nos. 2, 4, 5, 9, 11, 13)
Respondent.))

This is a petition for a writ of habeas corpus brought *pro se* by Petitioner pursuant to 28 U.S.C. § 2254 regarding a 1970 conviction based on a plea of "nolo contendere" to a rape charge. According to the petition, Petitioner filed a previous petition for a writ of habeas corpus in this Court, challenging the same conviction and sentence (*see* 75-379 SC (PR)). United States District Court Judge Samuel Conti addressed the identical claims raised here in Petitioner's earlier petition and issued an order to show cause on June 19, 1975, which is attached to one of Petitioner's filings. *See*, Petition to Amend Petition, Received December 26, 2006.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was signed into law on April 24, 1996. Under AEDPA, a district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence raised in a previous petition. *See* 28 U.S.C. § 2244(b)(1); *Babbitt v. Woodford*, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the

1 | court of appeals authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Here, the instant petition challenges the same conviction and sentence as the previous petition filed in this Court in 1975. Petitioner has not presented an order from the court of appeals authorizing the Court to consider these claims. Accordingly, the Court must dismiss the instant petition in its entirety. Petitioner is free to seek such an order from the United States Court of Appeals for the Ninth Circuit. See, 28 U.S.C. § 2244(b)(3)(A). **CONCLUSION** For the forgoing reasons, the petition for writ of habeas corpus is DISMISSED as a second and successive petition. Petitioner's motions are DENIED as moot. The Clerk shall terminate all motions as decided by this order, close the file and enter judgment in this matter. IT IS SO ORDERED. DATED: April 16, 2007 United States District Judge